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ABSTRACT

This booklet introduces secondary grade students to the criminal laws of West Virginia. It can easily be adapted and used by educators in other states. The authors believe that young people must recognize and understand these laws and the mechanisms which society uses to implement and enforce them if they are to function as an integral, important, useful part of society. Each section includes a narrative followed by a discussion question. Sections include: how a bill becomes a law; our criminal court system; crimes against the government (e.g. treason); crimes against the person (e.g. homicide, assault, robbery, kidnapping); crimes against property (e.g. arson, shoplifting) crimes against the currency (forgery); crimes against public justice (perjury, bribery); crimes against the peace (riots, conspiracy, firearms); crimes against chastity, morality and decency; crimes against public policy; crimes relating to drugs; crimes relating to elections; laws relating to motor vehicle operator's licenses; and laws relating to child welfare. The booklet concludes with a glossary of terms, and listings of further readings, filmstrips, and films. (Author/RM)

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LAWS FOR YOUNG *Mountaineers*

SO 013 526

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1980

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INTRODUCTION

History has shown that human beings are **social** animals. Since man first came upon the earth, he has chosen to seek out others of his own kind to live together in groups and function as a society. To do so, even at the most primitive levels, it has always developed that the society within which man dwells must be structured—it must have rules to govern the behavior of its members and to provide guidance for how those members should interact with one another.

We, today, of course, live in a much more complicated society than has ever existed before. We are literally surrounded by other people, and our lives are beset by rules and regulations from all quarters. Each of you is already very familiar with many of these rules: there are rules which you are required to abide by in your home; there are rules which govern your conduct in school; even when you engage in organized athletics—baseball, for example—your conduct is limited by certain rules which must be obeyed by all who participate. In large measure, you accept these rules without question in the beginning because they are enforced by those who, for one reason or another, have power over you. At some point in your life, however, you come to realize that most rules serve a useful purpose; that they are necessary in order to ensure that all of those many people who participate in the organized activity, or who function together in that certain group of people to which the rules apply (the family, the school, etc.) are able to harmonize with one another and function together to accomplish mutual goals. This booklet, too, is about rules, but rules that apply to a much larger group of people than most of the other rules with which you are perhaps more familiar. These rules have been elevated to the status of "law," but they serve the same general purpose as the kinds of rules that were just mentioned: they are an effort by society as a whole to govern the behavior of its members so as to permit the society to function in an organized, meaningful manner, and enable it to further the goals that it has collectively determined are important to it.

This booklet deals with a specific kind of law: criminal law. The particular laws which you will read about and study in connection with your use of this booklet have evolved over many, many years; they describe conduct which society as a whole has determined is unacceptable and must not be tolerated if that society is to prosper and all its members are to be afforded the opportunity to hold a secure and meaningful place within it.

The system of criminal laws that has been developed is an imperfect one to be sure, but it has come about through a process of trial and error that has taken place over the whole history of civilization. It is clearly the best we have, and all the citizens of this country and this state, including the young people, must recognize and understand these laws and the mechanisms which society uses to implement and enforce them if they are to function as an integral, important, useful part of society. This booklet, and the accompanying materials and instructional activities that come with it, are designed to give you a basic introduction to the more commonly breached criminal laws of our state (especially those most often encountered by our young people) and the judicial system which confronts those who run afoul of those laws. It is oriented to you, the Young Mountaineers, in the hope that, through knowledge and understanding of the criminal laws by which we must all abide, you will be better equipped to function effectively as a member of society, and to reach the goals which you have set for your future roles in that society.

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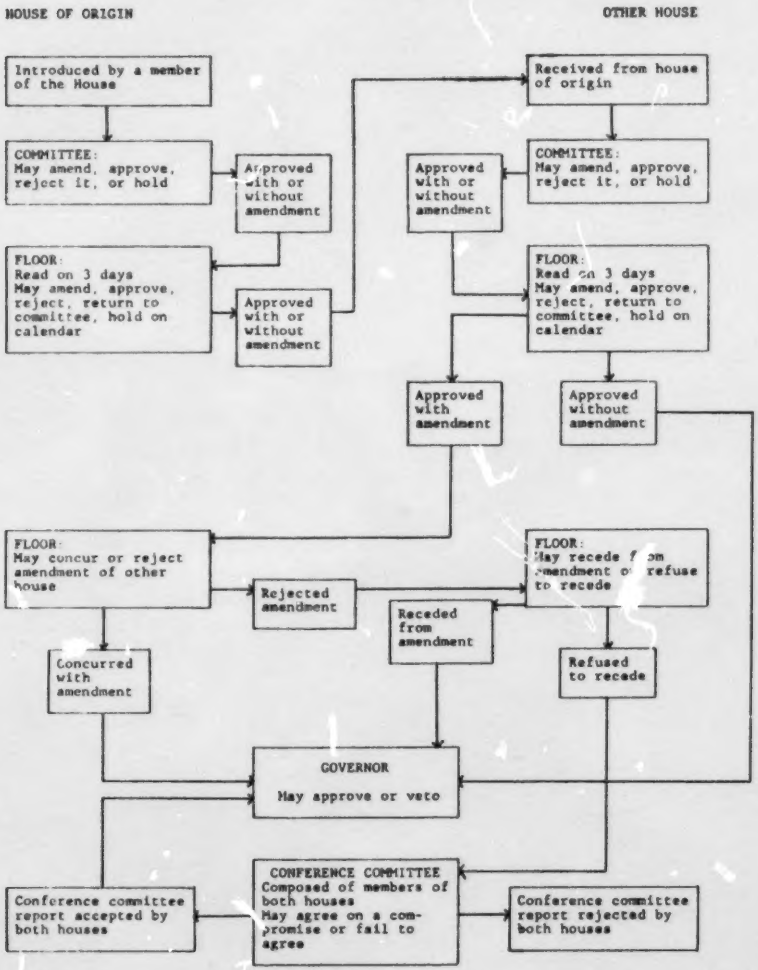
HOW A BILL BECOMES A LAW


HOUSE OF ORIGIN
OTHER HOUSE
Introduced by a member of the House
COMMITTEE: May amend, approve, reject it, or hold
Approved with or without amendment
FLOOR: Read on 3 days May amend, approve, reject, return to committee, hold on calendar
Approved with or without amendment
Received from house of origin
COMMITTEE: May amend, approve, reject it, or hold
Approved with or without amendment
FLOOR: Read on 3 days May amend, approve, reject, return to committee, hold on calendar
Approved with amendment
Approved without amendment
FLOOR: May concur or reject amendment of other house
Rejected amendment
FLOOR: May recede from amendment or refuse to recede
Receded from amendment
Concurred with amendment
Refused to recede
GOVERNOR May approve or veto
CONFERENCE COMMITTEE Composed of members of both houses May agree on a compromise or fail to agree
Conference committee report accepted by both houses
Conference committee report rejected by both houses

HOW A BILL BECOMES A LAW

Drafting

Any legislator or committee may have a bill written. Although there are exceptions, this usually is done by specialists in the Office of Legislative Services. When staff members are asked to draft a bill on a particular subject, they take the appropriate section(s) of West Virginia law and combine it with the proposed changes. This is the bill that is introduced.

Introduction

When a bill is introduced, the clerk identifies the bill and the president or speaker announces which committee or committees the bill will be sent to.

Committee

Here small groups of senators or delegates give each bill more detailed study than is possible by the entire Senate or House. If an issue is to have a public hearing, it will take place at this stage.

The committee has many options when studying a bill. It can amend the bill, combine it with similar bills, or even have a new bill written. It may kill the bill by not considering it, tabling it indefinitely, or voting it down. It can report the bill to the floor in one of three ways: with no recommendation, with the recommendation that it pass, or with the recommendation that it not pass.

Floor Action

After each bill is reported back to the floor of the House or Senate, it must go through three separate readings. The first reading simply identifies the bill, and members are given a copy to study. On second reading, the bill may be amended. On the third day, the final vote is taken on the bill. At any time before the bill is passed, a majority of legislators may vote to send it back to committee.

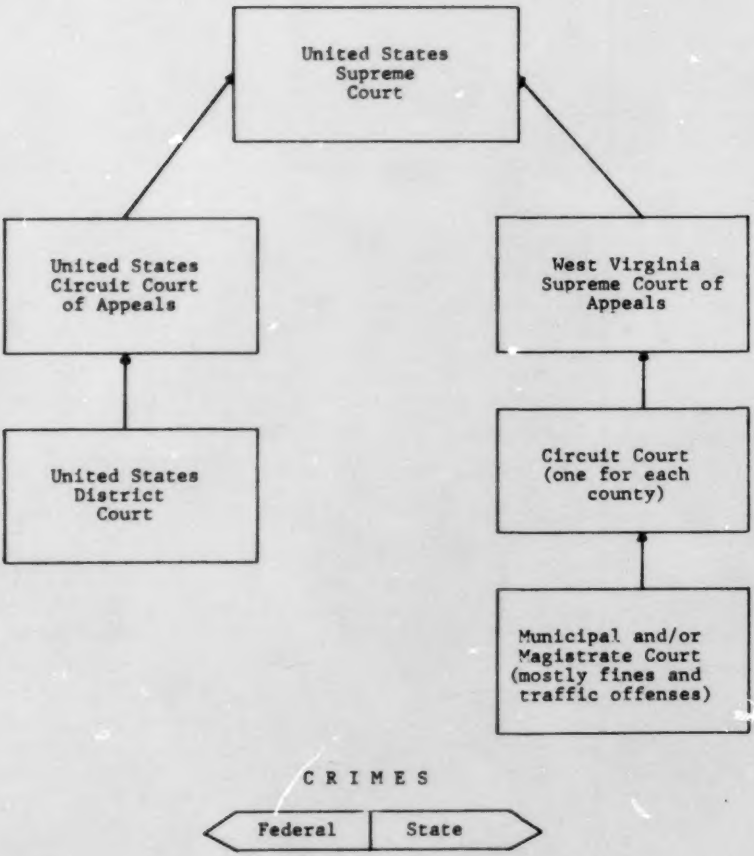
Other Chamber

If a bill is passed, it is sent to the other chamber of the Legislature, where it is sent to committee to begin the study process again. If no amendments are made and the bill is passed here also, it is sent to the Governor. If any changes are made, however, the bill must be considered again by the first chamber. If no agreement can be reached, a conference committee with representatives of both chambers is established to work out the differences. If this committee can reach a compromise, its bill must be approved by both houses to pass the Legislature. If it cannot reach a compromise, another conference committee may be appointed or the measure may be considered dead.

Governor

After a bill passes both houses, it is printed in its final form and sent to the Governor. When he receives the bill, he has five days to approve or veto the bill as long as the Legislature is in session. Once the Legislature adjourns, the Governor has fifteen days after final adjournment to act. If he does not act within these time limits, the bill becomes law automatically.

OUR CRIMINAL COURT SYSTEM


United States Supreme Court
United States Circuit Court of Appeals
West Virginia Supreme Court of Appeals
United States District Court
Circuit Court (one for each county)
Municipal and/or Magistrate Court (mostly fines and traffic offenses)
C R I M E S
Federal
State

CRIMES AGAINST THE GOVERNMENT

Treason

Treason against the State of West Virginia is a crime. The crime of treason is the act of levying war against the state or in adhering to its enemies, giving them aid and comfort. Treason is punishable by confinement in the penitentiary for life or, in the discretion of the jury or in the discretion of the Court when there is a plea of guilty, by confinement in the penitentiary for not less than three (3) nor more than ten (10) years.

Further, it is unlawful for any person to speak, print, publish, or communicate, by language, sign, picture, or other means, any teachings or doctrines of a government hostile, inimical or antagonistic to those now or hereafter existing under the Constitution and laws of this State of the United States. Any person found guilty of such activity shall, for the first offense, be guilty of a misdemeanor and, upon conviction, shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) or, in the discretion of the Court, shall be confined in the County Jail for not more than twelve (12) months or shall be punished by both such fine and imprisonment. Upon a second conviction of this offense, such person shall be deemed guilty of a felony and shall be confined in the penitentiary for not less than one (1) nor more than five (5) years.

Also, it is unlawful for any person for exhibition, display or otherwise, to place any words, figures, marks, pictures, designs, or drawings upon any flag, standard, color or ensign of the United States or upon the West Virginia State flag or to expose any such flags to the public. This activity is a misdemeanor and is punishable by a fine of not less than five dollars ($5.00) nor more than one hundred dollars ($100.00) and, in the discretion of the Court, confinement in the County Jail for a period of not more than thirty (30) days.

Discussion:

Find an example of a person that committed treason and show how this case was developed.

CRIMES AGAINST THE PERSON

Homicide

Homicide is the act of taking away the life of another. Homicide is ordinarily classified as justifiable, excusable or felonious.

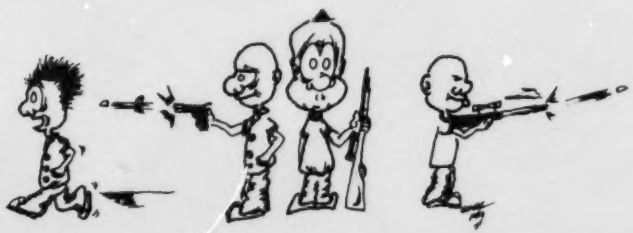
Justifiable homicide is the act of taking the life of another intentionally but without any evil design and under such circumstances of necessity or duty as render the act proper and relieves the party from any shadows of blame. An example of justifiable homicide is the situation where the killing takes place in the endeavor to prevent the commission of a felony and which killing could not otherwise be avoided.

Excusable homicide is the killing of a human being by misadventure, by misfortune or in self-defense. The name itself imports some fault, error, or omission, so trivial, however, that the law excuses it from the guilt of a felony, although in strictness it is deserving of some degree of punishment. Homicide by misadventure is the accidental killing of another where the slayer is doing a lawful act unaccompanied by any criminally careless or reckless conduct. Homicide by misfortune or accidental homicide is the situation where a person is doing a lawful act, without any intention of hurt, and unfortunately kills another. Homicide in self-defense is the situation where the killing of a person is in defense of one's self upon a sudden affray and where the slayer had no other possible or, at least probable, means of escaping from his assailant.

Felonious homicide is the wrongful killing of a human being of any age or sex without justification or excuse. Felonious homicide is either murder or manslaughter, depending upon whether or not the act was done with malice, express or implied.

Murder is distinguished by the laws of West Virginia as murder of the first degree and murder of the second degree. Murder in the first degree is any willful, deliberate, and premeditated killing with malice aforethought. Murder by poison, lying in wait, imprisonment, starving, or by any willful, deliberate, and premeditated killing, or in the commission of, or attempt to commit, arson, rape, robbery or burglary, is murder of the first degree. Murder of the first degree is punishable by confinement in the penitentiary for life.

All other murder is murder of the second degree. Thus, if the killing of a human being be malicious, but not willful, deliberate, and premeditated, then such killing is murder of the second degree. Murder of the second degree is punishable by confinement in the penitentiary for not less than five (5) nor more than eighteen (18) years.



Manslaughter is the unlawful killing of another without malice, either expressed or implied. There are two degrees of manslaughter, voluntary and involuntary.

Voluntary manslaughter is the intentional, unlawful, and felonious, but not deliberate or malicious, taking of life. Voluntary manslaughter is the unlawful killing of another without malice, actual or implied, upon sudden heat or passion, or reasonable provocation, or in mutual combat. Voluntary manslaughter is punishable by confinement in the penitentiary for not less than one (1) nor more than five (5) years.

Involuntary manslaughter is the killing of one accidentally and contrary to the intention of the parties. Manslaughter is involuntary where a killing is caused by the doing of an unlawful act, not amounting to a felony nor likely to endanger life and without any intention to kill, or where one kills another by doing a lawful act in an unlawful manner. In involuntary manslaughter there is no premeditation, conspiracy, or malice. Involuntary manslaughter is a misdemeanor punishable by confinement in the County Jail for not more than one (1) year or by a fine of not more than one thousand dollars ($1,000.00) or, in the discretion of the Court, by both such fine and imprisonment.

Assault

a. Aggravated Assault—If any person maliciously shoots or wounds any person or by any means causes him bodily injury with intent to disable or kill, he shall, except where it is otherwise provided, be guilty of a felony, and, upon conviction, shall be punished by confinement in a penitentiary for not less than two nor more than ten years. If such act is done unlawfully, but not maliciously, with the intent aforesaid, the offender shall be guilty of a felony, and upon conviction, shall, in the discretion of the Court, either be confined in a penitentiary for not less than one (1) nor more than five (5) years, or be confined in jail not exceeding twelve (12) months and fined not exceeding five hundred dollars ($500.00).

b. Assault—If any person unlawfully attempts to commit a violent injury to another person or unlawfully commits an act which places another in reasonable fear of immediately receiving a violent injury, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail for not more than six (6) months or fined not more than one hundred dollars ($100.00) or both such fine and imprisonment.

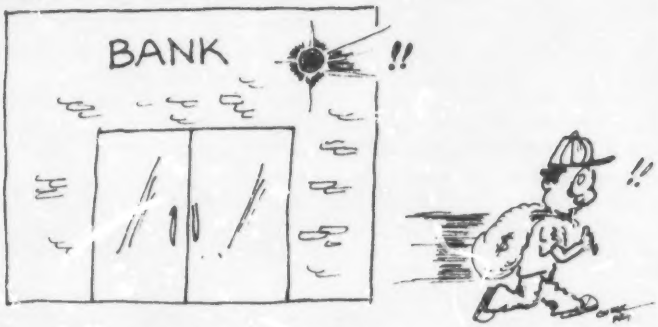
c. Battery—If any person unlawfully and intentionally makes physical contact of an insulting or provoking nature with another person or unlawfully and intentionally causes physical harm to another person, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail for not more than twelve (12) months, or fined not more than five hundred dollars ($500.00), or both such fine and imprisonment.

Assault and Battery on School Employees

If any person commits an assault by unlawfully attempting to commit a violent injury to the person of a school employee or by unlawfully committing an act which places a school employee in reasonable apprehension of immediately receiving a violent injury, he shall be confined in jail not less than five days nor more than six months and fined not less than fifty ($50.00) dollars nor more than one hundred dollars ($100.00).

If any person commits a battery by unlawfully and intentionally making physical contact of an insulting or provoking nature with the person of a school employee or by unlawfully and intentionally causing physical harm to a school employee, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less than ten days nor more than twelve months and fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00).

Robbery



It is prohibited by law for any person to forcibly take goods or money from another person by strangulation, suffocation, by striking or beating, by any type of violence or threats of violence, or even by the threat of presenting a firearm or other deadly weapon. This offense is referred to as robbery and a person convicted of such an offense shall be confined in the penitentiary for not less than ten (10) years.

If a person commits or attempts to commit a robbery in any other mode or by any other means and without such violence, he shall, nevertheless, be guilty of a felony and, upon conviction, shall be confined in the penitentiary for not less than five (5) years nor more than eighteen (18) years. Further, if any person uses force or violence to take any property, money, or thing of value from a bank, he shall be guilty of a felony and, upon conviction, shall be confined in the penitentiary for not less than ten (10) nor more than twenty (20) years. Also, if any person, while committing such an offense, assaults another person or puts his life in jeopardy by the use of a dangerous weapon, he shall likewise be guilty of a felony and, upon conviction, shall be confined in the penitentiary for not less than ten (10) nor more than twenty-five (25) years.

Extortion

If any person threatens injury to the character, person, or property of another person or to the character, person, or property of his wife or child, or accuses him or them of any offense, and extorts money or other things of value from him, he is guilty of the crime of extortion. A person convicted of this offense shall be confined in the penitentiary for not less than one (1) nor more than five (5) years.

Kidnapping

If any person, by force, threat, duress, fraud, or enticement, takes, confines, conceals, or otherwise kidnaps any other person for the purpose of, or with the intent of taking, receiving, demanding, or extorting from such person, or from any other person or persons, any ransom, money, or other thing, he shall be guilty of a felony and, upon conviction, shall be punished by confinement in the penitentiary for life and shall not be eligible for parole unless the jury recommends mercy. However, in such cases where the person, against whom the offense is committed, be returned or permitted to return alive and without bodily harm, but after the ransom has been paid, the punishment shall be by confinement in the penitentiary for a term of not less than twenty (20) years. In all cases where the person against whom the offense is committed is returned or is permitted to return alive and without any ransom having been given, the punishment shall be by confinement in the penitentiary for any term of years not less than ten (10).

Sexual Offenses

Sexual offenses are divided into two primary categories—sexual assault and sexual abuse. Both sexual assault and sexual abuse are then divided into different levels of activity with differing punishments involved.

Sexual Assault

First degree—A person is guilty of sexual assault in the first degree when he engages in sexual intercourse with another person by forcible compulsion and, in so doing, inflicts serious bodily injury or employs a deadly weapon. First degree sexual assault may also be defined as engaging in sexual intercourse with another person who is incapable of consent either because of being physically helpless or being less than eleven years old.

Violation of the provisions of this section is a felony and, upon conviction, the person shall be imprisoned not less than ten (10) nor more than twenty (20) years, or fined not more than ten thousand dollars ($10,000) and imprisoned in the penitentiary not less than ten (10) nor more than twenty (20) years.

Second degree—A person is guilty of sexual assault in the second degree when he engages in sexual intercourse by forcible compulsion or causes penetration of any inanimate object into another person's genitals or anus.

Violation of this section is a felony and, upon conviction, the person shall be imprisoned in the penitentiary not less than five (5) nor more than ten (10) years, or fined not more than ten thousand dollars ($10,000) and imprisoned in the penitentiary not less than five (5) nor more than ten (10) years.

Third degree—A person is guilty of sexual assault in the third degree when he engages in sexual intercourse with another person who is incapable of consent because he is mentally defective or mentally incapacitated or is less than sixteen years old and is at least four years younger than the defendant.

Violation of this section is a felony and, upon conviction, the person shall be imprisoned in the penitentiary not less than one (1) nor more than five (5) years, or fined not more than ten thousand dollars ($10,000) and imprisoned in the penitentiary not less than one (1) year nor more than five (5) years.

Sexual Abuse

First degree—A person is guilty of sexual abuse in the first degree when he subjects another person to sexual contact who is incapable of consent because he is physically helpless or is less then eleven years old. A person is also guilty of sexual abuse in the first degree when he subjects another person to sexual contact by forcible compulsion.

Violation of this section is a felony and, upon conviction, the person shall be imprisoned in the penitentiary not less than one (1) nor more than five (5) years, or fined not more than ten thousand dollars ($10,000) and imprisoned in the penitentiary not less than one (1) year nor more than five (5) years.

Second degree—A person is guilty of sexual abuse in the second degree when he subjects another person to sexual contact who is incapable of consent because he is mentally defective or mentally incapacitated.

Violation of this section is a misdemeanor and, upon conviction, the person shall be confined in the county jail not more than twelve (12) months or fined not more than five hundred dollars ($500) and confined in the county jail not more than twelve (12) months.

Third degree—A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent, when such lack of consent is due to the victim's incapacity to consent by reason of being less than sixteen years old.

In any prosecution under this section, it is a defense that the defendant was less than sixteen years old or that the defendant was less than four years older than the victim.

Violation of this section is a misdemeanor and, upon conviction, the person shall be confined in the county jail not more than ninety (90) days, or fined nor more than five hundred dollars ($500) and confined in the county jail not more than ninety (90) days.

Indecent Exposure

A person is guilty of indecent exposure when he intentionally exposes the genitals or anus or intimate parts of his body in circumstances in which he knows his conduct is likely to cause affront or alarm.

Violation of this section is a misdemeanor and, upon conviction, the person shall be confined in the county jail not more than ninety (90) days, or fined not more than two hundred fifty dollars ($250) and confined in the county jail not more than ninety (90) days.

Public Indecency

A person is guilty of public indecency when, knowing his conduct is likely to be observed by others who would be affronted or alarmed, he engages in any overt act of sexual gratification or he intentionally exposes the genitals or anus of his body or the body of another person.

Violation of this section is a misdemeanor and, upon conviction, the person shall be fined not more than two hundred fifty dollars ($250).

Discussion:

Why do crimes such as aggravated assault, robbery, and first degree sexual assault carry such large penalties?

CRIMES AGAINST PROPERTY

Arson

Any person who willfully and maliciously sets fire to, burns, or causes to be burned, any dwelling house, whether occupied, unoccupied, or vacant, shall be guilty of arson in the first degree and, upon conviction, shall be confined in the penitentiary for not less than two (2) nor more than twenty (20) years. If a person willfully and maliciously sets fire to or burns any other type of building or structure, other than a dwelling house, he shall be guilty of arson in the second degree and, upon conviction, shall be confined in the penitentiary for not less than one (1) nor more than ten (10) years.

The burning of personal property of another which has a value of more than fifty dollars ($50.00) is labeled third degree arson and is punishable by confinment in the penitentiary for not less than one (1) nor more than three (3) years. To set fire to any woods, fence, grass, straw or other things attached to the land is a misdemeanor and is punishable by a fine of up to five hundred dollars ($500.00) and confinement in the County Jail for not less than two (2) nor more than twelve (12) months.

Furthermore, the placing of a bomb or other incendiary device which would destroy property or endanger life, even if no damage is done, is a felony punishable by confinement in the penitentiary for not less than one (1) nor more than five (5) years. Even the simple possession of an explosive device with the intent to use it unlawfully is a felony which is punishable by a fine of not more than five hundred dollars ($500.00) and imprisonment for not more than five (5) years. Further, it is unlawful for any person to make, carry, possess, sell, give or use any type of an incendiary device commonly called a "molotov cocktail." This offense is a felony punishable by confinement in the penitentiary for not less than one (1) nor more than five (5) years.

Burglary

If any person, during the night time, breaks and enters or enters without breaking any dwelling house with the intent to commit a felony or to steal anything, he shall be guilty of the crime of burglary. Also, if any person, during the day time, breaks and enters or enters without breaking any dwelling house with the intent to commit a felony or to steal anything, he shall also be guilty of burglary. A person convicted of burglary shall be punished by confinement in the penitentiary for not less than one (1) nor more than ten (10) years.

Further, if a person breaks and enters or enters without breaking any building, other than a dwelling house, and with the intent to commit a felony or to steal anything, he shall also be guilty of a felony and upon conviction, shall be confined in the penitentiary for not less than one (1) year nor more than ten (10) years. If a person breaks and enters or enters without breaking any automobile or other vehicle with the intent to steal anything, he shall be guilty of a misdemeanor and, upon conviction, shall be confined in the County Jail for not less than two (2) nor more than twelve (12) months and be fined not more than one hundred dollars ($100.00).

Larceny

If any person takes and carries away the personal goods of another against that person's will or without his consent and with the felonious intent to steal them, he is guilty of the crime of larceny.

a. If any person commits simple larceny of goods of the value of two hundred dollars ($200.00) or more, such person shall be guilty of a felony, designated grand larceny, and upon conviction thereof, shall be confined in a penitentiary for not less than one (1) nor more than ten (10) years, or, in the discretion of the Court, be confined in the County Jail for not more than one (1) year and shall be fined not more than five hundred dollars ($500.00).

b. If any person commits simple larceny of goods of the value of less than two hundred dollars ($200.00), such person shall be guilty of a misdemeanor, designated petit larceny, and, upon conviction thereof, shall be confined in the County Jail for a term not to exceed one year or fined not to exceed five hundred dollars ($500.00), or both, in the discretion of the Court.

Further, if any person buys or receives from another person or transfers to a person other than the owner, any stolen goods which he knows or has reason to believe have been stolen, he is also deemed guilty of the larceny of those goods and shall be punished in the same manner as if he had actually stolen the goods himself. The same penalities for grand and petit larceny would apply depending upon the value of the goods so transferred.

If any person embezzles or fraudulently converts to his own use any money or property of another person which shall have come into his possession or have been placed under his care or management by virtue of his office or place of employment, he shall be guilty of larceny. This crime of embezzlement is a felony punishable by imprisonment in the penitentiary for not less than ten (10) years.

If any person obtains from another person any money, goods, or other property by any false pretense or representation and with the intent to defraud him, he shall be deemed guilty of larceny and, upon conviction for such an offense, he shall be confined in the penitentiary for not less than one (1) nor more than five (5) years, or, in the discretion of the Court, be confined in the County Jail for not more than one (1) year and be fined not exceeding five hundred dollars ($500.00). Further, it shall be unlawful for any person knowingly to obtain or attempt to obtain credit or to purchase or to attempt to purchase any goods, property, or services by the use of any false, fictitious, or counterfeit credit card. The person committing this offense shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) or shall be imprisoned for not more than one (1) year or shall be punished by both such fine and imprisonment.

Any person who, with intent to defraud, makes and issues a check for the payment of money to another and obtains from that person any money, goods, or other property knowing at the time that there is insufficient funds to cover such check, shall be deemed guilty of a misdemeanor if the amount of the check so written is under two hundred

dollars ($200.00). Such person, upon conviction, shall be imprisoned for not more than six (6) months or fined not more than two hundred dollars ($200.00) or shall be punished by both such fine and imprisonment. However, if the amount of the check so written is two hundred dollars ($200.00) or more, such person shall be guilty of a felony and, upon conviction, shall be confined in the penitentiary for not less than one (1) year nor more than five (5) years and be fined not more than five hundred dollars ($500.00) or both such fine and imprisonment.

Shoplifting

If any person willfully takes possession of any merchandise offered for sale by any store with the intention of converting it to his use without paying the owner for the value of such goods, he shall be guilty of shoplifting. If he alters any label, price tag or marking upon the merchandise offered for sale with the intention of depriving the owner of all or of some part of the value of the goods, he is likewise guilty of shoplifting. Also, if a person willfully transfers any merchandise offered for sale from one container to another with the intent to deprive the owner of all or some part of the value of the goods, he shall be deemed guilty of shoplifting. If any person commits an act of shoplifting and the value of the merchandise is less than fifty dollars ($50.00), he shall be deemed guilty of a misdemeanor and upon conviction, shall be confined in the County Jail for not less than one (1) day nor more than twelve (12) months or fined not less than five dollars ($5.00) nor more than five hundred dollars ($500.00) or be punished by both such fine and imprisonment. If the value of the merchandise is over fifty dollars ($50.00), such person shall be deemed guilty of a felony and, upon conviction, shall be confined in the penitentiary for not less than one (1) or more than ten (10) years and fined not more than one thousand dollars ($1,000.00).

Discussion:

List three reasons why crimes against property are on the rise.

CRIMES AGAINST THE CURRENCY

Forgery

If any person forges a public record, certificate, return or attestation of a Clerk of a Court or of any public officer, he shall be guilty of forgery and, upon conviction, shall be confined in the penitentiary for not less than two (2) nor more than ten (10) years. Further, if a person forges any other type of writing, he shall also be guilty of a felony and, upon conviction, shall be confined in the penitentiary for not less than one (1) year and fined not exceeding five hundred dollars ($500.00). Any person who forges any coin, currency, note, or bill of a banking institution shall be guilty of the crime of counterfeiting and, upon conviction, shall be confined in the penitentiary for not less than two (2) nor more than ten (10) years.

Discussion:

List three examples of forgery.

CRIMES AGAINST PUBLIC JUSTICE

Perjury

If a person willfully testifies falsely under an oath or affirmation lawfully administered in a trial of a person for a felony concerning a matter material to the trial, he is guilty of perjury, which is a felony. Likewise, to induce or procure another person to testify falsely is subornation of perjury, also a felony. A person convicted of perjury or subornation of perjury shall be confined in the penitentiary for not less than one (1) year nor more than ten (10) years.

False Swearing

If a person willfully swears under an oath or affirmation lawfully administered in a trial of a person for a felony concerning a matter which is not material to the trial, he is guilty of false swearing, which is a misdemeanor. If a person on any occasion other than a trial for a felony, testifies falsely concerning any matter or thing material or not material or procures another person to do so, he is, likewise, guilty of false swearing. A person convicted of false swearing shall be fined not more than one thousand dollars ($1,000.00) and, in the discretion of the Court, may be confined in jail for not more than one (1) year. In the case of perjury and false swearing, the person so convicted shall be adjudged forever incapable of holding any office of honor, trust, or profit in this State, or of serving as a juror.

Bribery

If any person shall bribe or attempt to bribe by directly or indirectly giving to or bestowing upon any executive, legislative, judicial, or ministerial officer of this State or upon any member of the legislature any gift, gratuity, money, testimonial, or other valuable thing, or shall make a promise of such a thing, in order to influence that person in the performance of any of his official public duties, or with the intent to influence his act, vote, opinion, decision, or judgment in any manner, such party shall be guilty of bribery. Upon conviction for the offense of bribery or attempted bribery, such person shall be confined in the penitentiary for not less than one (1) year nor more than ten (10) years; moreover, such person shall be forever disqualified from holding any office or position of honor, trust, or profit in this State.

If any person by threats, force, or otherwise, intimidates or impedes or attempts to intimidate or impede any judge, Justice of the Peace, juror, witness or any officer or member of any court in the discharge of his duty as such or by any means obstructs or impedes or attempts to obstruct or impede the administration of justice in any court, such person shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than twenty-five dollars ($25.00) nor more than two hundred dollars ($200.00) and be imprisoned in the County Jail not exceeding six (6) months. Also, any person who by threats, menaces, acts or otherwise shall forcibly or illegally hinder, obstruct, or oppose or attempt to obstruct or oppose or shall counsel, advise or invite others to hinder, obstruct, or to oppose any officer in this State, whether civil or military, in the lawful exercise or discharge of his official duty shall, for every offense, be guilty of a misdemeanor and, upon conviction, shall be fined not less than fifty ($50.00) nor more than five hundred dollars ($500.00) and may, in the discretion of the Court, be confined in the County Jail for not more than one (1) year.

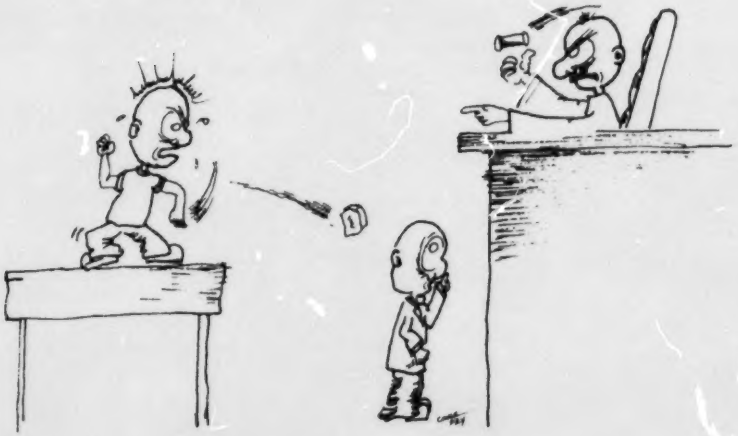
Contempt of Court

It is unlawful for any person to misbehave in the Courtroom or in the presence of a judge in his official capacity or to commit violence to a judge or officer of the Court, or to

a juror, witness, or party going to, attending, or returning from the Court. This offense is commonly referred to as contempt of court. Also, to disobey or resist any officer of the Court, juror, witness or other person to any lawful process, judgment, decree, or order of the Court is contempt of court. A person found to be in contempt of court may be fined, imprisoned, or both.

Discussion:

What reasons could be given for crimes against public justice having such strong penalties?



CRIMES AGAINST THE PEACE

Citizens of West Virginia have the same rights as are guaranteed under the Bill of Rights of the United States Constitution. We must, of course, exercise these rights in such a way they will not interfere with the rights of others. For example, peaceful assemblies, parades, marches to promote the common good and to instruct representatives or to apply for redress of grievances are allowed; however, proper permits need to be obtained from the municipality in which the assembly will take place.

Riots and Unlawful Assemblages

It is unlawful for persons to have riots and unlawful assemblages. Thus, if any person engages in a riot or an unlawful assemblage and damages property in the course of such activity, he shall be guilty of a felony and, upon conviction, shall be confined in the penitentiary for not less than one (1) nor more than ten (10) years. Even if no damage is done, every rioter and every person unlawfully or tumultuously assembled shall be guilty of a misdemeanor and, upon conviction, shall be confined in the County Jail for not more than one (1) year and fined an amount not to exceed five hundred dollars ($500.00). Also, it is unlawful for a collection of individuals, five or more in number, to assemble for the unlawful purpose of committing acts of violence toward other persons or property. All persons who shall compose such a mob and who possess the intent to inflict damage to the property of another or to injure other persons, although no property be damaged or person injured, shall be subject to a fine of not less than one hundred dollars ($100.00) and in the discretion of the Court, may be confined in the County Jail for not less than thirty (30) days nor more than twelve (12) months. However, if by an overt act a person damages property or injures a person, he shall be guilty of a felony and, upon conviction, shall be confined in the penitentiary for not less than one (1) nor more than ten (10) years. In addition, all other persons, whether, they damaged property or injured anyone but nevertheless composed a mob which did such damage, shall be confined in the penitentiary for not more than five (5) years and shall be required to pay for any property which may have been damaged.

Conspiracy

It is unlawful for two (2) or more persons to combine or conspire together for the purpose of inflicting any bodily injury upon any other person or for the purpose of destroying any property. If two (2) or more persons conspire for this purpose, although the act is not carried out, they shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) and may, in the discretion of the Court, be confined in the County Jail for not less than (1) nor more than twelve (12) months. However, if any person in the pursuance of such a combination or conspiracy actually destroys or damages any property, he shall be confined in the penitentiary for not less than one (1) nor more than ten (10) years.

Firearms

It is unlawful for any person, without a State license, to carry upon his person a revolver, pistol, knife, or similar weapon. Such action is a misdemeanor and for the first offense is punishable by imprisonment in the County Jail for not less than six (6) nor more than twelve (12) months. Upon conviction for a second offense, such person shall be deemed guilty of a felony and shall be punished by confinement in the penitentiary for not less than one (1) nor more than five (5) years. In either case, such person shall also be fined not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00). Also, possession or sale of fireworks, except for public displays and with a proper license, is illegal and carries with it a fine of one hundred dollars ($100.00) or ninety (90) days in jail.

Discussion:

. The Federal and State Supreme Courts have acted in many different ways concerning riots and assemblages. Why would this be an unclear area of the law?

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CRIMES AGAINST CHASTITY, MORALITY AND DECENCY

It is unlawful for any person to have two wives or two husbands at the same time. This is commonly referred to as bigamy and such offense is punishable by confinement in the penitentiary for not less than one (1) nor more than five (5) years.

Also, if persons who are not married to each other lewdly and lasciviously associate and cohabit together, they shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than fifty dollars ($50.00) and may, in the discretion of the Court, be imprisoned not exceeding six (6) months. Upon repetition of the offense, such person shall, upon conviction, be confined in the County Jail for not less than six (6) nor more than twelve (12) months. Further, if any male or female shall have sexual intercourse with an immediate relative, such person shall be guilty of incest, which is a felony. Upon conviction of this offense, such person shall be confined in the penitentiary for not less than five (5) nor more than ten (10) years. Moreover, if any person knowingly sends or causes to be sent or brings or causes to be brought into this State for distribution, exhibition, or public display, or in this State, prepares, distributes, exhibits or makes a public display or has in his possession with the intent to distribute, exhibit, or make public display of, any obscene matter to a minor, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than five hundred dollars ($500.00) or imprisoned in the County Jail for not more than six (6) months or both such fine and imprisonment. A person convicted of a second or subsequent offense shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars ($1,000.00) or imprisoned in the County Jail for not more than one (1) year or both fined and imprisoned.

Any person or a parent, legal guardian, or person having custody and control of a minor, who photographs or films such minor (person under the age of eighteen (18) years), in any sexually explicit conduct or causes or knowingly permits, uses, persuades, induces, entices, or coerces such minor child to engage in or assist in any sexually explicit act shall be guilty of a felony when such person has knowledge that any such act may be photographed or filmed. Upon conviction thereof, such person shall be fined not more than ten thousand dollars ($10,000), or imprisoned in the penitentiary not more than ten (10) years, or both fined and imprisoned.

Discussion:

Who could bring charges against a person accused of crimes in the areas of chastity, morality or decency?

CRIMES AGAINST PUBLIC POLICY

Gambling

It is unlawful for any person to keep or exhibit a gambling table commonly called an A.B.C. or E.O. Table, or faro bank or keno table, or any other gambling device. Such person shall be guilty of a misdemeanor and, upon conviction, shall be confined in the County Jail for not less than two (2) nor more than twelve (12) months and shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00). Further, it is unlawful for any person to bet or play at any such gambling table, bank, or device and any person who plays at any such game shall be guilty of a misdemeanor and, upon conviction for such an offense, shall be fined not less than five dollars ($5.00) nor more than one hundred dollars ($100.00).

Improper Use of Telephone

It shall be unlawful for any person with the intent to harass or abuse another person by means of the telephone to:

1. Make any comments, requests, suggestions, or proposal which is obscene;
2. Make a telephone call whether or not conversation ensues, without disclosing his identity and with the intent to harass any person at the called number;
3. Make or cause the telephone of another to repeatedly or continuously ring with intent to harass any person at the called number;
4. Make repeated telephone calls during which conversation ensues, with intent to harass any person at the called number;
5. Threaten to commit a crime against any person or property.

It shall be unlawful for any person to knowingly permit any telephone under his control to be used for any purpose stated above.

Any person who violates any provision of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than five hundred dollars ($500.00) or imprisoned in the County Jail for not more than six (6) months, or both fined and imprisoned.

False Identification Cards

If one exhibits or displays a false or erroneous birth certificate, draft card, registration card or license, he is guilty of a misdemeanor and shall be punished by a fine not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00) and may be imprisoned in the County Jail for not more than thirty (30) days. Also, anyone who uses an identification (I.D.) card belonging to another for the purpose of purchasing or drinking liquor or beer or to gain admission where he would not otherwise be permitted because of his age is also guilty of a misdemeanor. Such person, upon conviction, may be punished by fine and imprisonment.

Disruption of School or Church

If any person willfully interrupts or disturbs any assembly of people met for the worship of God, he shall be guilty of a misdemeanor and, upon conviction, shall be confined in the County Jail not more than six (6) months and fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00).

If any person willfully interrupts or disturbs any school, Sunday school or school exhibition, or any assembly lawfully carried on, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) and, at the discretion of the Court, be confined in the County Jail not more than thirty (30) days in addition to such fine.

No person, not a student in regular attendance, shall loiter in or about any school, school building, or school grounds in violation of any posted rules or regulations governing the use of any such school without written permission from the principal. Any person who shall violate the provisions of this section shall be guilty of a misdemeanor, and, upon conviction for the first offense thereof, shall be fined not more than one hundred dollars ($100.00), or imprisoned in the County Jail not more than thirty (30) days, or both such fine and imprisonment. Upon a second or subsequent conviction, any such person shall be fined not more than five hundred dollars ($500.00) or imprisoned in the County Jail not more than one (1) year, or both such fine and imprisonment.

Intoxication

It is unlawful for a person to appear in a public place in an intoxicated condition. Further, it is prohibited for a person to drink alcoholic liquor in a public place, to drink alcoholic liquor in a motor vehicle on any highway, street, alley, or any public garage, to offer a drink of alcoholic liquor to another person in a public place, or to possess any alcoholic liquor which was manufactured in violation of the rules and regulations of the State Alcoholic Beverage Control Commission. Any person who commits any such offense shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than five dollars ($5.00) nor more than one hundred dollars ($100.00) or confined in the County Jail not more than sixty (60) days, or by both such fine and imprisonment.

Discussion:

Give five examples which would be considered crimes against public policy.

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CONTROLLED SUBSTANCES: USES AND EFFE

	Drugs	Schedule*	Often Prescribed Brand Names	Medical Uses	Dependence Physical
Narcotics	Opium	II	Dover's Powder, Paregoric	Analgesic, antidiarrheal	High
	Morphine	II	Morphine	Analgesic	High
	Codeine	II III V	Codeine	Analgesic, antitussive	Moderate
	Heroin	I	None	None	High
	Meperidine (Pethidine)	II	Demerol, Pethadol	Analgesic	High
	Methadone	II	Dolophine, Methadone, Methadose	Analgesic, heroin substitute	High
	Other Narcotics	I II III V	Dilaudid, Leritine, Numorphan, Percodan	Analgesic, antidiarrheal, antitussive	High
Depressants	Chloral Hydrate	IV	Noctec, Somnos	Hypnotic	Moderate
	Barbiturates	II III IV	Amytal, Butisol, Nembutal, Phenobarbital, Seconal, Tuinal	Anesthetic, anti-convulsant, sedation, sleep	High
	Glutethimide	III	Doriden	Sedation, sleep	High
	Methaqualone	II	Optimil, Parest, Quaalude, Somnafac, Sopor	Sedation, sleep	High
	Tranquilizers	IV	Equanil, Librium, Miltown Serax, Tranxene, Valium	Anti-anxiety, muscle relaxant, sedation	Moderate
	Other Depressants	III IV	Clonopin, Dalmane, Dormate, Noludar, Placydil, Valmid	Anti-anxiety, sedation, sleep	Possible
Stimulants	Cocaine†	II	Cocaine	Local anesthetic	Possible
	Amphetamines	II III	Benzedrine, Biphetamine, Desoxyn, Dexedrine	Hyperkinesis, narcolepsy, weight control	Possible
	Phenmetrazine	II	Preludin	Weight control	Possible
	Methylphenidate	II	Ritalin	Hyperkinesis	Possible
	Other Stimulants	III IV	Bacarate, Cylert, Didrex, Ionamin, Plegine, Pondimin, Pre-Sate, Sanorex, Voranil	Weight control	Possible
Hallucinogens	LSD	I	None	None	None
	Mescaline	I	None	None	None
	Psilocybin-Psilocyn	I	None	None	None
	MDA	I	None	None	None
	PCP‡	III	Sernylan	Veterinary anesthetic	None
	Other Hallucinogens	I	None	None	None
Cannabis	Marihuana Hashish Hashish Oil	I	None	None	Degree unknown

*Scheduling classifications vary for individual drugs since controlled substances are often marketed in combination with other medicinal ingredients.

†Designated a narcotic under the Controlled Substances Act.

‡Designated a depressant under the Controlled Substances Act.

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Potential: Psychological	Tolerance	Duration of Effects (in hours)	Usual Methods of Administration	Possible Effects	Effects of Overdose	Withdrawal Syndrome
High	Yes	3 to 6	Oral, smoked	Euphoria, drowsiness, respiratory depression, constricted pupils, nausea	Slow and shallow breathing, clammy skin, convulsions, coma, possible death	Watery eyes, runny nose, yawning, loss of appetite, irritability, tremors, panic, chills and sweating, cramps, nausea
High	Yes	3 to 6	Injected, smoked			
Moderate	Yes	3 to 6	Oral, injected			
High	Yes	3 to 6	Injected, sniffed			
High	Yes	3 to 6	Oral, injected			
High	Yes	12 to 24	Oral, injected			
High	Yes	3 to 6	Oral, injected			
Moderate	Probable	5 to 8	Oral	Slurred speech, disorientation, drunken behavior without odor of alcohol	Shallow respiration, cold and clammy skin, dilated pupils, weak and rapid pulse, coma, possible death	Anxiety, insomnia, tremors, delirium, convulsions, possible death
High	Yes	1 to 16	Oral, injected			
High	Yes	4 to 8	Oral			
High	Yes	4 to 8	Oral			
Moderate	Yes	4 to 8	Oral			
Possible	Yes	4 to 8	Oral			
High	Yes	2	Injected, sniffed	Increased alertness, excitation, euphoria, dilated pupils, increased pulse rate and blood pressure, insomnia, loss of appetite	Agitation, increase in body temperature, hallucinations, convulsions, possible death	Apathy, long periods of sleep, irritability, depression, disorientation
High	Yes	2 to 4	Oral, injected			
High	Yes	2 to 4	Oral			
High	Yes	2 to 4	Oral			
Possible	Yes	2 to 4	Oral			
Degree unknown	Yes	Variable	Oral	Illusions and hallucinations (with exception of MDA); poor perception of time and distance	Longer, more intense "trip" episodes, psychosis, possible death	Withdrawal syndrome not reported
Degree unknown	Yes	Variable	Oral, injected			
Degree unknown	Yes	Variable	Oral			
Degree unknown	Yes	Variable	Oral, injected, sniffed			
Degree unknown	Yes	Variable	Oral, injected, smoked			
Degree unknown	Yes	Variable	Oral, injected, sniffed			
Moderate	Yes	2 to 4	Oral, smoked	Euphoria, relaxed inhibitions, increased appetite, disoriented behavior	Fatigue, paranoia, possible psychosis	Insomnia, hyperactivity, and decreased appetite reported in a limited number of individuals

CRIMES RELATING TO DRUGS

The State of West Virginia has enacted the Uniform Controlled Substances Act. The purpose of this Act is to prohibit the unlawful use of drugs. Each year the State Board of Pharmacy recommends to the legislature those drugs which it has determined should be added to, deleted from, or shifted among the various schedules of controlled substances that are contained within the Act.

It is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, any substance listed in the Act. The penalties vary depending upon the type of drug involved. The minimum penalty is confinement in the County Jail for six (6) months to one (1) year or a fine of not more than five thousand dollars ($5,000.00), or both fine and confinement; the maximum penalty is imprisonment in the penitentiary for not less than one (1) nor more than fifteen (15) years or a fine of not more than twenty-five thousand dollars ($25,000.00), or both fine and imprisonment.

It is also unlawful for any person to create, deliver, or possess with intent to deliver a controlled substance which has been altered in appearance or packaged so as to appear to be something else. Any person who does so shall be punished on the basis of the true identity and character of the particular drug involved and its classification under the Act.

Further, it is unlawful for any person even to possess a controlled substance unless the substance was obtained directly from or pursuant to a valid prescription or other order of a person or organization authorized to dispense drugs. Any person who possesses a controlled substance other than pursuant to such prescription or order shall be guilty of a misdemeanor and, upon conviction, may be punished by a fine of up to one thousand dollars ($1,000.00), confinement for ninety (90) days to six (6) months, or both.

In addition, it is unlawful for any person knowingly or intentionally to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge. Such person is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one (1) nor more than four (4) years, fined not more than thirty thousand dollars ($30,000.00), or both.

Finally, it is unlawful for any person eighteen (18) years of age or over to distribute a controlled substance to a person under eighteen (18) years of age, and a person who does so may be punished by a much more severe fine and prison sentence than usual. Moreover, any person convicted of a second offense under the Uniform Controlled Substances Act may be imprisoned for up to twice the term otherwise authorized, fined twice the amount otherwise authorized, or punished by both a double fine and a double term of imprisonment.

Discussion:

List three possible results of drug abuse.

CRIMES RELATING TO ELECTIONS

Any person who shall falsely make or fraudulently deface, or fraudulently destroy or change in any manner any election record or ballot, poll book, tally sheet or certificate of election, or conspire with another to do any such act, or induce or attempt to induce any other persons to do any such act, shall be guilty of a felony and, upon conviction, shall be punished by imprisonment in the penitentiary for not less than one (1) nor more than ten (10) years. Also, any person who shall sign the name of another person to any certificate, affidavit, ballot, report, statement or writing with the intent to mislead and deceive or who shall use such certificate, affidavit, ballot, report, statement or writing to which the name of another person has been signed, knowing that such person has not signed such statement, shall be guilty of a felony, and upon conviction, shall be punished by imprisonment. Further, any person who shall fraudulently or forcibly add to or diminish the number of ballots cast in an election or votes received by a candidate or who shall destroy or fraudulently make any erasure or alteration of any kind upon any ballot, tally sheet, poll book, list of voter, or election returns shall be guilty of a felony and, upon conviction, shall be punished by imprisonment in the penitentiary for not less than one (1) nor more than ten (10) years.

No person shall print any imitation voting ballot for the purpose of casting illegal votes at an election. Such person shall be guilty of a felony and, upon conviction, shall be punished by imprisonment in the State penitentiary for not less than one (1) nor more than ten (10) years. In addition, any person who shall unlawfully take or remove any ballot from the place in which such ballots are lawfully kept or shall unlawfully remove any ballot from the election room or have any ballot in his possession outside of the election room during the election shall be guilty of a felony and, upon conviction, shall be confined in the penitentiary for not less than one (1) nor more than five (5) years or, in the discretion of the Court, be confined in jail for not more than one (1) year. If any person makes any statement or affidavit relating to his qualifications for voting or regarding any other aspect of an election and knowingly swears falsely or counsels another to do so, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars ($1,000.00) and imprisoned in the County Jail for a period of not more than one (1) year.

If any person shall, during an election, remove or destroy any of the supplies or other conveniences placed in the voting booths or compartments or should remove, tear down, or deface any cards printed for the instruction of the voters or shall induce another person to do so, whether or not such acts be committed, such person shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars ($1,000.00) or confined in the County Jail for not more than one (1) year, or both, in the discretion of the Court. Where electronic voting machines are used, any person who shall tamper or attempt to tamper with any vote recording device or automatic tabulating equipment or in any way intentionally impair or attempt to impair their use shall be deemed guilty of a felony and, upon conviction, shall be confined in the penitentiary for not less than one (1) year not more than ten (10) years. Also, any election commissioner, poll clerk, custodian, or any other person who causes any vote recording device or automatic tabulating equipment to fail to record or tabulate correctly all votes cast shall be guilty of a felony and, upon conviction, shall be confined in the penitentiary for not less than one (1) nor more than ten (10) years.

No person is allowed to do any campaigning inside the polling place or within sixty (60) feet of any polling place. A person convicted of this offense shall be deemed guilty of a misdemeanor and shall be fined not more than five hundred dollars ($500.00) or confined in the County Jail for not more than thirty (30) days.

If any person shall induce or attempt to induce any voter to write or otherwise place on his ballot any name or sign of any type as a distinguishing mark by which to indicate how such person voted, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars ($1,000.00) or imprisoned in the County Jail for not more than one (1) year. Further, no voter shall place any mark upon his ballot or permit any other person to do so by which it may be afterward identified as the ballot voted by him; such person shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars ($1,000.00) or confined in the County Jail for not more than one (1) year, or punished by both such fine and imprisonment.

Any person who by violence, threatening gestures, speeches, force, menace or intimidation shall prevent or attempt to prevent an election from being held or who shall in any manner obstruct or attempt to obstruct the holding of an election shall be guilty of a misdemeanor. Also, if any person shall by any manner of force, fraud, menace, or intimidation prevent or attempt to prevent any voter from voting in any election, he shall also be guilty of a misdemeanor. Conviction for either offense is punishable by a fine of not more than one thousand dollars ($1,000.00), or confinement in the County Jail for not more than one (1) year, or by both such fine and imprisonment.

If a candidate for any office loans or gives, directly or indirectly, or offers or promises to loan or give any money or other thing of value to any elector for the purpose of influencing the vote of such elector, or inducing such elector to work for the election of such candidate, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars ($1,000.00) or confined in the County Jail for not more than one (1) year, or both.

Any employer or agent of the employer who attempts to influence the political action of his employees for any candidate for public office shall be guilty of corrupt practices and, upon conviction, shall be fined not less than one thousand dollars ($1,000.00) nor more than twenty thousand dollars ($20,000.00), or imprisoned in the County Jail for not more than one (1) year or fined and imprisoned. Also, any voter who shall, before or during any election, directly or indirectly solicit, demand, receive, agree or contract for any money, gift, loan, or other valuable consideration, place of employment or office for himself or for any other person for voting or agreeing to vote for any person or candidate or agreeing to refrain from voting or any person who shall, after any election, solicit, demand, or receive

any money or valuable consideration for having voted or refrained from voting or having induced any other person to vote or refrain from voting in such election, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars ($1,000.00), or confined in jail for not more than one (1) year, or fined and imprisoned.

Further, if any person knowingly votes when he is not legally entitled to or votes more than once in the same election or procures or assists in procuring an illegal vote to be admitted or received, knowing the same to be illegal, he shall be guilty of a misdeamor and, upon conviction, shall be fined not more than one thousand dollars ($1,000.00), or confined in the County Jail not more than one (1) year, or fined and imprisoned. Also, it is unlawful to bet or wager money or other thing of value upon any election held in this State. Any person so betting shall be guilty of a misdemeanor and, upon conviction, shall forfeit the value of the money or other thing bet or wagered and shall be fined not more than fifty dollars ($50.00).

Discussion:

West Virginia has had several election violations. Find one case and study its progress through the courts.

LAWS RELATING TO MOTOR VEHICLE OPERATOR'S LICENSES

Operator's License

No person shall drive any motor vehicle upon a highway in this state unless such person has a valid license as an operator or chauffeur. The term "motor vehicle" includes cars, trucks, buses, as well as motorcycles and motorbikes. The operator's or chauffeur's license is issued by the West Virginia Department of Motor Vehicles.

A regular operator's or chauffeur's license may not be issued to any person under the age of eighteen (18) years. However, a license may be issued to a person who is between the ages of sixteen (16) and eighteen (18) years. This license is called a junior or probationary operator's license. A junior or probationary operator's license may be issued to any person between the ages of sixteen (16) and eighteen (18) years who successfully completes all the examinations and driving tests required by law for the issuance of a regular operator's license. Certain conditions or restrictions on the operation of a motor vehicle by a person holding such a junior or probationary operator's license may be imposed, depending on the facts and circumstances in each case. These conditions or restrictions are printed on each license. When a person using a junior or probationary operator's license operates a motor vehicle in violation of those conditions or restrictions or is convicted of two traffic violations, the junior or probationary license of such person will be permanently revoked. Once this license is revoked, it cannot be reissued, when the person reaches the age of eighteen (18) years, however, he may apply for a regular license. If the junior or probationary operator's license has not been revoked by the time the person reaches the age of eighteen (18) years, such person upon proper application automatically receives his regular operator's license without taking any additional exams or driving tests and paying the required operator's fee. In order to obtain a junior operator's license, application must be made to the Department of Motor Vehicles. The parents or guardian of the applicant must sign the application indicating their consent to its issuance.

Before obtaining either a junior operator's license or a regular operator's license, a learner's permit must be obtained. Any person who is at least sixteen (16) years of age may apply to the Department of Motor Vehicles for such an instruction permit. To obtain such a learner's permit, the applicant must appear before the Department of Public Safety, commonly called the State Police and successfully pass all parts of a written, oral or automated examination. Upon successful completion of these examinations, the State Police shall issue to the applicant an instruction permit to drive a motor vehicle on the public highways of this State for a period of sixty (60) days. However, while a person is operating or driving a vehicle under such permit, he must be accompanied at all times by a licensed operator and this licensed operator must be actually sitting beside the person while he is driving the vehicle.

The Department of Public Safety shall examine every person who applies for an operator's license. Such an examination shall include a test of 5he applicant's eyesight, his ability to read and understand highway signs, his knowledge of the traffic laws of this State, and shall include an actual demonstration of his ability to exercise ordinary and reasonable control in the operation of a motor vehicle. Further, such other physical and mental examinations as the Department of Motor Vehicles deems necessary may be administered to determine the applicant's fitness to operate a motor vehicle safely upon the highways.

The Department of Motor Vehicles shall issue to every person who qualifies an operator's license which shall bear a number assigned to the licensee, his full name, date of birth, residence address, and a brief description of the licensee, as well as a place for his signature. Every person licensed to drive must have his operator's license in his immediate possession at all times while he is operating a motor vehicle on the highways and, if requested, he must be able to present his driver's license upon demand of a Magistrate, a law enforcement officer, or an inspector for the Department of Motor Vehicles. An operator's license is valid for four (4) years from the date of its issuance, however, it may be renewed for successive periods of four (4) years.

Cancellation, Suspension or Revocation of License

A valid operator's license can be cancelled, suspended, or revoked. The action taken depends on the facts and circumstances in each case.

Whenever a conviction is entered against a person in any Court for the violation of any law of this State governing or regulating the operation of a motor vehicle an abstract of the judgment on such conviction is transmitted to the Department of Motor Vehicles within seventy-two (72) hours after such conviction. The Department of Motor Vehicles must revoke the license of any operator upon receipt of a record showing that such person has been convicted of manslaughter or negligent homicide resulting from the operation of a motor vehicle, driving a motor vehicle while under the influence of intoxicating liquor or narcotic drugs, conviction for any felony during the commission of which a motor vehicle is used, failure to stop and render aid to a motor vehicle accident resulting in the death or personal injury of another, perjury or false swearing to the Department of Motor Vehicles relating to the ownership or operation of a motor vehicle, or conviction for three (3) charges or reckless driving committed within a period of twelve (12) months.

The Department of Motor Vehicles may, rather than revoke a person's license, merely suspend his license for one of the following offenses: the reckless or unlawful operation of a motor vehicle which caused or contributed to an accident resulting in the death or personal injury of another person or property damage; conviction of traffic offenses indicating a disrespect for the traffic laws and a disregard for the safety of other persons on the highways; the habitually reckless or negligent operation of a motor vehicle; incompetence to drive a motor vehicle; permitting an unlawful or fraudulent use of his operator's license; or commission of an offense in another state which, if it had been committed in this State, would be a ground for suspension or revocation of such license. Upon suspension of the license of any person, the Department of Motor Vehicles shall immediately notify such person in writing and afford him an opportunity for a hearing regarding the charges. After such hearing, the Department may either rescind its order of suspension, extend the suspension, or revoke such person's license.

In addition to the various provisions calling for the revocation of one's license, a person may also be guilty of criminal offenses relating to the use of his license. It is a misdemeanor for any person to display or have in his possession any cancelled, suspended, revoked or fictitious operator's license; to lend his license to another person and knowingly allow such person to use it; to display or represent to others, as his own, a license which is not registered to him; to refuse to surrender to the Department of Motor Vehicles any license which has been suspended, revoked or cancelled; to use a false or fictitious name in the application for such license or to conceal a material fact or to commit a fraud in the completion of his application for such license; or to permit the unlawful use of such operator's license. Such offenses are punishable by fine and imprisonment.

Further, any person who drives a motor vehicle on any public highway of this State during such time as his license has been suspended or revoked shall, for the first offense, be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment in the County Jail for a period of forty-eight (48) hours and, in addition, be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00). For the second such offense, such person shall be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment in the County Jail for a period of ten (10) days and, in addition, shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00). For the third and subsequent such offenses, such person shall be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment in the County Jail for a period of six (6) months and, in addition, fined not less than one hundred and fifty dollars ($150.00) nor more than five hundred dollars ($500.00).

Also, no person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized to drive. Such offense is a misdemeanor punishable by fine and imprisonment.

Point System

The State of West Virginia operates a point system for the violation of its laws relating to the operation of motor vehicles. If a person violates one of these laws or regulations, a certain number of points are registered against his license. For example, if a person is convicted of reckless driving, six (6) points are charged against his license. Other offenses include:

1. Hit and run—four (4) points.
2. Speeding in excess of fifteen (15) MPH in a school zone—six (6) points.
3. Passing a stopped school bus—four (4) points.
4. Failure to obey stop signs or traffic lights—three (3) points.
5. Driving on the left side of the roadway—three (3) points.
6. Driving too fast under hazardous conditions—three (3) points.
7. Failure to keep the vehicle under control—three (3) points.
8. Driving at speeds in excess of the posted speed limit—three (3) to six (6) points.
9. Failure to yield the right of way—three (3) points.
10. Passing in a no-passing zone—three (3) points.
11. Following another vehicle too closely—two (2) points.
12. Driving with more than three persons in the front seat of a vehicle—two (2) points.

After an operator of a motor vehicle has accumulated six (6) points the Department of Motor Vehicles issues a warning letter advising such person of the number of points registered against his license. If a person accumulates nine (9) to twelve (12) points, he is ordered to appear for an interview; during this interview his driving record is reviewed. If such person should refuse to appear for this interview and depending upon the facts, certain disciplinary action may be taken, such as a warning, probation with conditions, license restriction, or a license suspension of up to one (1) year. Further, the total points registered against one's license are kept for a period of two (2) years from the date such points are entered. After this two (2) year period, all points accumulated will be removed, although the violations remain on the individual's traffic record at the Department of Motor Vehicles for seven (7) years.

Automobile Accidents

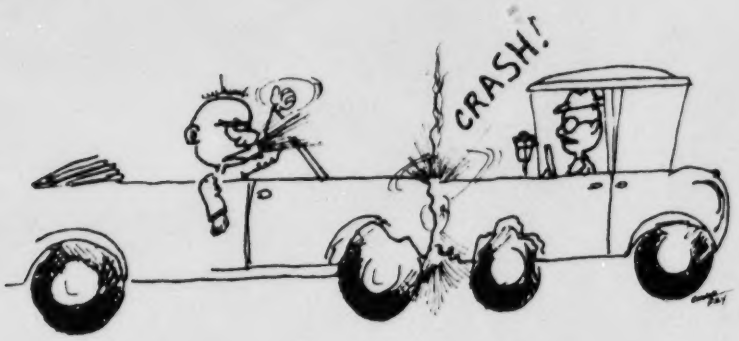
The driver of any vehicle involved in an accident resulting in injury to or death of any persons must immediately stop such vehicle at the scene of the accident or as close to it as possible. Any person failing to stop shall upon conviction, be punished by

imprsonment for not less than thirty (30) days nor more than one (1) year or by fine of not less than one hundred dollars ($100.00) nor more than five thousand dollars ($5,000.00), or by both such fine and imprisonment. Further, such person's operator's license shall be revoked.

The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle must give his name and address, and the registration number of the vehicle he is driving to the person struck, or the driver or occupant of, or the person attending any vehicle collided with, and shall render to any person injured in such accident reasonable assistance, including carrying or making arrangements for surgical treatment if it is apparent that such treatment is necessary or such carrying is requested by the injured person. Further, the driver of any vehicle which collides with any other vehicle which is unattended must immediately stop and shall then and there either locate and notify the operator or owner of such vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances surrounding the accident.

In addition, the driver of a vehicle involved in an accident resulting in injury to or death of any person must immediately give notice of the accident to the local police department, county sheriff, or state police. Also, the driver (or his attorney or agent) of a vehicle involved in an accident which results in bodily injury to or the death of any person, or total property damage to an apparent extent of two hundred fifty dollars ($250.00), must, within five (5) days after the accident, forward a written report of the accident ot the Department of Motor Vehicles. Forms for this purpose may be acquired at the local State Police headquarters. Failure to report an accident will result in the suspension of the operator's license of the person who fails to make the report.

When the death of any person ensued within one (1) year of a proximate result of injury received by the driving of any vehicle in reckless disregard of the safety of other, the person so operating the vehicle shall be guilty of negligent homicide. Any person convicted of negligent homicide shall be punished by imprisonment for not more than one (1) year or by fine of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00), or by both such fine and imprisonment. Also, such person's license or permit to drive shall be revoked.



Driving While Intoxicated

It is unlawful for any person under the influence of intoxicating liquor or drugs to drive any vehicle on any highway of this State or for any owner of such vehicle knowingly to permit his automobile to be operated by a person in such condition. A person convicted of this offense for the first time shall be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment in the County Jail for not less than twenty-four (24) hours nor more than six (6) months and may, in addition, be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00); such convicted person's operator's license shall also be revoked for a period of six (6) months. A person committing this offense for the second time within a five (5) year period will also be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment in the County Jail for a period of not less than six (6) months nor more than one (1) year, without probation; in addition, his operator's license shall be revoked for a period of ten (10) years. A person committing this offense three (3) or more times within a five (5) year period is guilty of a felony and, upon conviction, shall be punished by confinement in the penitentiary for not less than one (1) nor more than three (3) years; also, his operator's license shall be revoked for a period of at least ten (10) years, and indefinitely thereafter unless restored by the Commissioner of Motor Vehicles.

Reckless Driving

Any person who drives a vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving. A person convicted of reckless driving may be punished, for the first offense, by imprisonment for a period of not less than five (5) days nor more than ninety (90) days, or by a fine of not less than twenty-five dollars ($25.00) nor more than five hundred dollars ($500.00), or by both such fine and imprisonment. For a second or subsequent conviction, such person may be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000.00), or by both such fine and imprisonment.

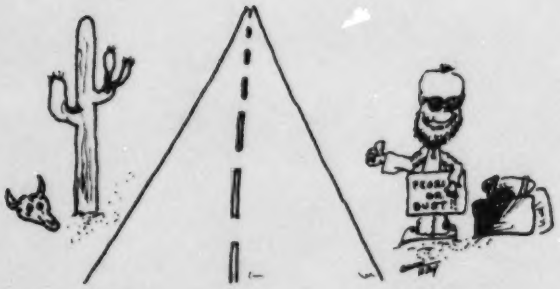
Illegal Possession of Automobile

Any person who drives a vehicle, not his own and without the consent of the owner and with the intent to deprive the actual owner of his possession of such vehicle, even though he does not intend to steal the vehicle, shall be guilty of a misdemeanor. Even though the owner of the vehicle may have consented on previous occasions to the driving of such vehicle by that person, nevertheless, the intent to so use the vehicle is not presumed or implied on subsequent occasions. Further, any person who assists in any such unauthorized taking or driving of a vehicle is also guilty of a misdemeanor. Both parties shall be subject to fine and imprisonment.

Further, any person who individually or in association with one or more persons willfully injures or tampers with any vehicle or breaks or removes any part or parts of or from a vehicle without the consent of the owner is also guilty of a misdemeanor. Such person shall likewise be punished by fine and imprisonment. In addition, any person who rents or leases a motor vehicle by means of any false or fraudulent representation, false pretense, or trick, shall be guilty of a misdemeanor and, upon conviction, may be confined in jail for a period of not more than one (1) year or fined not more than five hundred dollars ($500.00), or both.

Hitchhiking

It is unlawful for any person to stand in a roadway for the purpose of obtaining a ride; this is often referred to as "hitchhiking." Such person may be punished by a fine, imprisonment, or both.



Motorcycles

No one is allowed to operate or ride a motorcycle, motorscooter, or similar vehicle without wearing a securely fastened, reflectorized protective helmet specifically designed for this purpose. The operator of such a vehicle must also wear glasses with safety lenses, eyegoggles, or a face shield. Passengers may not ride on such a vehicle unless they ride on a seat specifically designed for that purpose. No more than one passenger may ride on a cycle or similar vehicle at any one time.

Discussion:

Why would the State of West Virginia implement a point system and what purpose does it achieve?

LAWS RELATING TO CHILD WELFARE

Chapter 49 of the West Virginia Code sets forth the State's Child Welfare Law and outlines procedures for abused, neglected and dependent children plus juveniles who come into conflict with the law. The child welfare system is administered by the Department of Welfare.

The purpose of the chapter is to provide a comprehensive system of child welfare throughout the State which will assure to each child such care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental and physical welfare of the child, preserve and strengthen the child's family ties whenever possible with recognition to the fundamental rights of parenthood and with recognition of the State's responsibility to assist the family in providing the necessary education and training and to reduce the rate of juvenile delinquency and to provide a system for the rehabilitation or detention of juvenile delinquents and protect the welfare of the general public. In pursuit of these goals, it is the intention of the Legislature to provide for removing the child from the custody of parents only when the child's welfare or the safety and protection of the public cannot be adequately safeguarded without removal, and, when the child has to be removed from his own family, to secure for him/her custody, care, and discipline consistent with the child's best interests and other goals.

Definitions under West Virginia's Child Welfare Law:

1. "Child" means any person under eighteen (18) years of age.
2. "Abused child" means a child:

   Whose parent, guardian, or custodian inflicts or attempts to inflict or allows to be inflicted as a result of inadequate supervision, physical injury or substantial emotional injury upon the child which endangers the present physical or mental health of such child or inflicts, attempts to inflict, or knowingly allows to be inflicted sexual abuse upon the child.
3. "Neglected child" means a child:
   a. Whose physical or mental condition is impaired or endangered as a result of the present refusal, failure or inability of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education and the condition is not due primarily to the lack of financial means of the parent, guardian, or custodian; or
   b. Who is presently without necessary food, clothing, shelter, medical care, education, or supervision because of the disappearance or absence of the child's parent or guardian.

   "Neglected child" does not mean:
   a. Whose parent, guardian or custodian has failed to provide him with medical care because such medical care conflicts with the tenets and practices of a recognized or religious denomination or order of which such parent, guardian, or custodian is an adherent or member, of
   b. Whose education is conducted within the provisions. . . .of this code.
4. "Delinquent child" means a child:
   a. Who commits an act which would be a crime under State law or a municipal ordinance if committed by an adult punishable by confinement in a jail or imprisonment;
   b. Who commits an act designated a crime under a municipal ordinance or State law not punishable by confinement in a jail or imprisonment;

c. Who, without just cause, habitually and continually refuses to respond to the lawful supervision by such child's parents, guardian, or custodian;

d. Who is habitually absent from school without good cause; or

e. Who willfully violates a condition of a probation order or a contempt order of any court.

Protective Services

The West Virginia Department of Welfare is the mandated agency to provide Child Protective Services and performs the following functions:

1. Receive all reports of children suspected to be neglected or abused.
2. Within 24 hours begin an investigation into each report.
3. Provide services to the child and family in any situation where neglect or abuse is suspected or known with the goal of keeping the family together.
4. In cases where the child is in imminent danger or where the child cannot remain in the home, initiate the necessary legal/court action.
5. Provide temporary care for children who, for safety and protection, must be removed from their parents' custody.

   Children can be placed in the care of the Deparment of Welfare in the following situations:

   a. Voluntary placement by parents
   b. Court petition for custody, pending hearing
   c. Court order following hearing
   d. Emergency custody granted by any police officer who determines the child to be in imminent danger; this cannot exceed fifteen (15) days.

Reporting Suspected Cases of Abuse or Neglect

Some persons, because of their professions and the kind of contact they have with children and families, are required by law to report suspected cases of neglect and abuse.

Mandated reporting. When any medical, dental, or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, peace officer or law enforcement official has reasonable cause to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect, such person shall immediately report the circumstances or cause a report to be made to the State Department Child Protective Service.

Any person who is mandated to report and fails to do so can be held guilty of a misdemeanor and could be fined not more than one hundred dollars ($100.00) or confined in the County Jail not more than ten (10) days.

In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of children, any other person may make a report if such person has reasonable cause to suspect that a child has been abused or neglected in a home or institution or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.

Any person, whether required or encouraged to report, has certain legal protections. Specifically, any person, official, or institution acting in good faith shall be immune from any civil or criminal liability.

The names of persons who do report suspected cases are kept confidential and not released.

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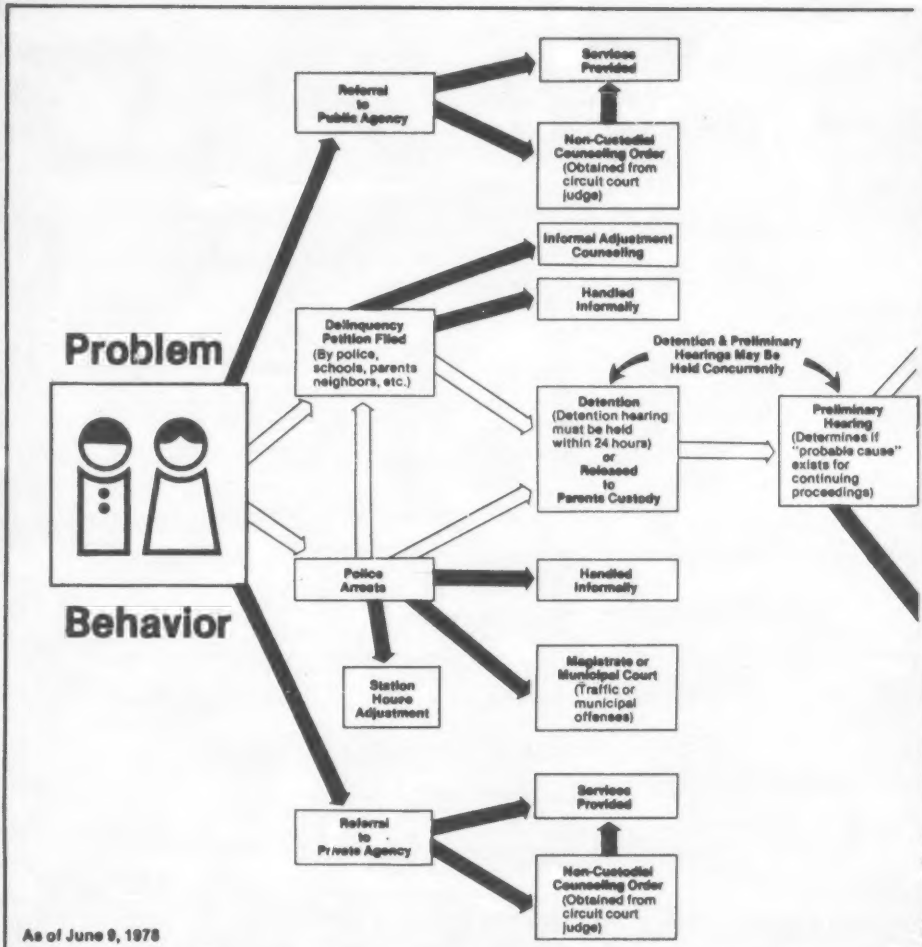
West Virginia Juvenile Justice System


Problem
Behavior
Referral to Public Agency
Services Provided
Non-Custodial Counseling Order (Obtained from circuit court judge)
Informal Adjustment Counseling
Handled Informally
Delinquency Petition Filed (By police, schools, parents neighbors, etc.)
Detention & Preliminary Hearings May Be Held Concurrently
Detention (Detention hearing must be held within 24 hours) or Released to Parents Custody
Preliminary Hearing (Determines if "probable cause" exists for continuing proceedings)
Police Arrests
Handled Informally
Magistrate or Municipal Court (Traffic or municipal offenses)
Station House Adjustment
Referral to Private Agency
Services Provided
Non-Custodial Counseling Order (Obtained from circuit court judge)
As of June 9, 1978

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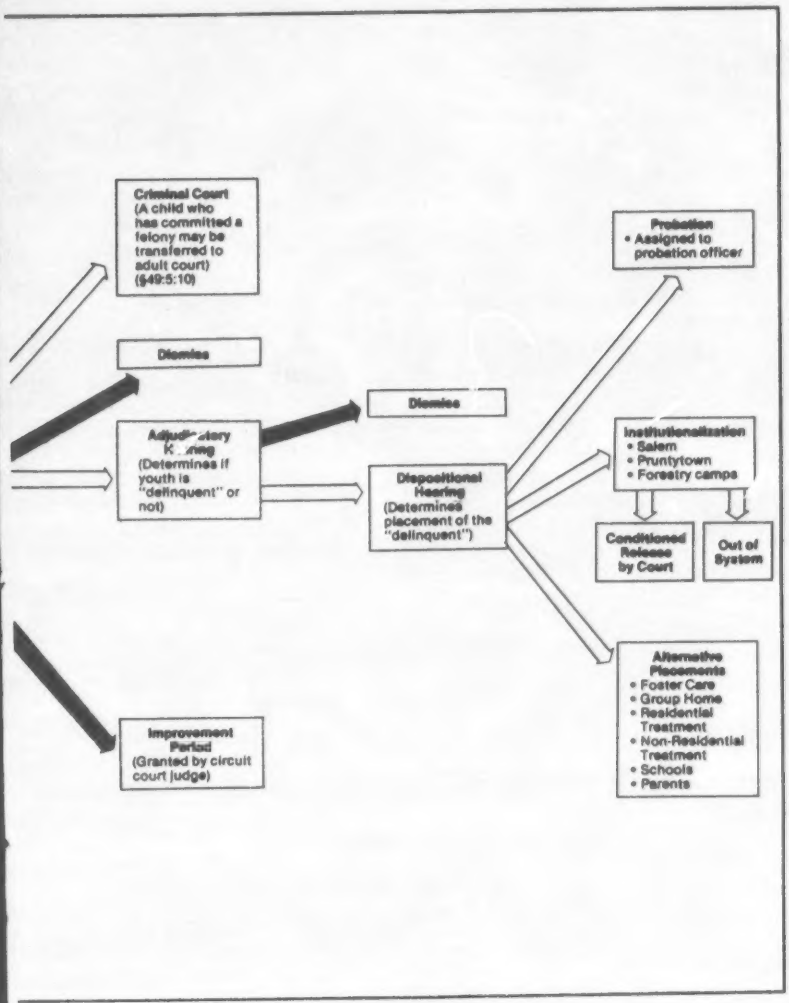
(Black arrows denote diversions from the system)



Juvenile Court Proceedings

This section of the Code provides constitutional guarantees to juveniles in all court proceedings. The Circuit Court of the county in which the child lives has the original jurisdiction in these proceedings. In circuits where there is more than one judge, juvenile cases may be assigned to one or more of the judges.

The flow chart on page 48 outlines West Virginia's juvenile justice system.

A child may be brought to the attention of the court:

1. By petition that the child is delinquent or neglected;
2. By certification or transfer from another court to the juvenile jurisdiction of the Circuit Court; or
3. By warrant or order, charging the child with the act of delinquency (see definitions on page 45).

A petition alleging that a child is delinquent may be filed by any person who has knowledge of or information concerning the facts alleged. The petition sets forth the name and address of the child's parents, guardians, or custodians and specific information regarding the conduct charged in the petition.

A child may be taken into custody by a law enforcement officer (1) only if grounds exist for the arrest of an adult in identical circumstances; or (2) the health, safety or welfare of the child is in danger; or (3) the child is a runaway without just cause.

When a child is taken into custody, the parents, guardians, or custodians must be notified immediately.

A juvenile arrested for a crime that would be a crime for an adult may be detained (held in a secure, locked facility) during any or all portions of the proceedings against him/her until final disposition.

Juveniles accused of status offenses may not be held with adults or juvenile criminal offenders in detention facilities nor incarcerated with criminal offenders in a juvenile institution at final disposition. A status offense is a crime committed by someone under eighteen (18) years which would not be a crime for an adult. Running away, truancy, and incorrigibility are considered status offenses and a child may be declared "delinquent" for such an offense.

No child under the age of fourteen (14) may be housed in jail for any reason.

Juveniles over the age of fourteen (14) may be committed to jail by a Circuit judge under the following circumstances:

1. If she/he has been committed to a State correctional institution and is awaiting transportation, not to exceed 96 hours.
2. If she/he is charged with a crime which would be a violent felony if committed by an adult.

Juveniles may be housed in a juvenile portion of the jail but not within sight of adult prisoners.

There are several detention facilities within the State specifically for the secure holding of juveniles pending final disposition of after disposition while awaiting transportation to a correctional facility.

During proceedings, a child has all of the following rights:

1. Any child shall be entitled to be released on bail or recognizance.
2. Children shall have the right to be represented by counsel (attorney) at all stages of proceedings, and to know the charges against him/her. If the child cannot pay for an attorney, the Court will appoint an attorney to represent the child in all proceedings.

3. The child shall have the opportunity to be heard in all proceedings, including the opportunity to testify, to present, and to cross-examine witnesses.

The general public is excluded from all proceedings.

The flow chart shows the various hearings that may be held in juvenile proceedings.

1. Detention hearing determines whether and for how long a child should be held securely. Usually, a child is detained only if she/he is a danger to herself/himself or others, or if the judge/referee believes the child will not be available for Court proceedings.
2. Preliminary hearing determines if probable cause exists for continuing proceedings against the child or, in some cases, to transfer a juvenile to adult criminal court. (Detention and preliminary hearings may be combined.)
3. Adjudicatory hearing determines guilt or innocence.
4. Dispositional hearing is to decide whether to incarcerate the child in a correctional institution, place on probation, or make some other alternative living arrangement like foster or group care.

ALTERNATIVES TO INCARCERATION

One of the primary objectives of West Virginia's juvenile laws is to provide care and supervision of youth in trouble with the law in the "least restrictive" environment possible. In most cases, this means non-institutional care, in or close to the youth's home community. Service agencies give special attention to individual needs of the youth. Removal of a child from a community should be a last resort.

New alternatives and services for troubled youth have been developed through West Virginia's participation in the Juvenile Justice and Delinquency Prevention Act. These funds have been made available throughout the State for projects designed to keep youth, especially non-criminals, out of institutions.

Two programs developed with JJDP funds are:

Day Treatment: Youth, who because of behavioral and/or emotional problems cannot maintain themselves in regular school, receive individualized academic and vocational instruction.

Specialized Foster Homes: Youth, who can no longer remain with their natural family, are placed with a trained family.

Other alternative services may include:

Residential Services: Youth, who can no longer remain with their family, may be placed in one of the licensed child care facilities or group homes in West Virginia.

Restitution: Youth may be required to pay for damages caused by vandalism, breaking and entering or other property destruction. This may be one condition imposed with probation. The judge may also require payment through a community service such as cleaning up a park.

Recreation, vocational training and jobs are also important in helping youth grow into responsible adults.

As more dollars become available, additional services will be seen in West Virginia communities.

Funds for this booklet were provided through a grant from the Juvenile Justice and Delinquency Preventive Act State Advisory Group. This program is administered through the West Virginia Department of Welfare.

IF YOU'RE UNDER 18 YEARS OF AGE, YOU'RE A JUVENILE. . .

This portion of the pamphlet was written to give you a rough idea of how the juvenile justice system works.

Hopefully, you will never become involved with the Juvenile Court. But if you do, you should know what is happening at each step in the process. Read this information carefully. Keep it, so that if you ever do have questions, you'll be able to find answers to them.

The pamphlet is written from the point of view of a juvenile who has been arrested. In addition to answering questions that arrested juveniles may have, it is hoped that this can serve as a tool for youth educators to provide basic information for young people and their families about the juvenile justice system.

Ten Important Things to Remember That Can Really Help You

1. DON'T RESIST ARREST. Fighting the police, swearing at them, giving a false name, trying to run away can only get you in more trouble.
2. GIVE YOUR CORRECT NAME, ADDRESS, AND TELEPHONE NUMBER TO A POLICEMAN.

   But, remember you have a **right** to remain silent.
3. IF YOU ARE ARRESTED and you don't have a lawyer, one will be appointed for you. You may have to wait some time. But until you see your lawyer, do not sign any papers or say anything about whether or not you are involved in the charge.
4. LEVEL WITH YOUR LAWYER. In order to help you, your lawyer needs **all** the facts.
5. COOPERATE WITH SOCIAL WORKERS AND PROBATION OFFICERS. But, remember, you don't have to talk about your case with them if you don't want to.
6. FOLLOW ALL CONDITIONS THE COURT REQUIRES. (Examples: going to school regularly, getting home early at night, etc.). It **can** make a difference.
7. WHEN YOU ARE IN COURT, arrive on time, be courteous, show respect for the Judge and dress neatly.
8. KEEP IN TOUCH WITH YOUR LAWYER.
9. ASK YOUR LAWYER TO EXPLAIN. If you don't understand what any papers you are asked to sign mean or what's happening in Court, ask your lawyer.
10. IF YOU ARE SENT TO THE DETENTION CENTER, cooperate and work at getting good recommendations from your counselors, house parents, and teachers.

JUVENILES (persons under 18 years of age) ARE TREATED DIFFERENTLY THAN ADULTS.

Because you are young, the judge is there to act in your best interest (as if he or she were your parent).

YOU DO HAVE SOME OF THE SAME RIGHTS AS ADULTS.

1. To know the charges against you
2. To have a lawyer
3. To have your lawyer question any witnesses against you at the time of your trial
4. To face your accusers
5. To tell your side (if you want to)
6. To have a record made of any Court proceedings against you

In West Virginia, There are Two Kinds of Juvenile Court Cases:

1. DELINQUENCY:
   a. If you have committed a crime that would be a crime if committed by an adult, i.e., murder, robbery, breaking and entering, assault;
   b. If you have committed a status offense. A status offense is not a crime for an adult, i.e., truancy, running away, disobeying your parents/guardian.
2. ABUSE OR NEGLECT:

   If your parents or guardians aren't taking proper care of you, the Court can be asked to do something about it. Page 34 describes abuse and neglect. A description of protective services available through your local Department of Welfare office is also included on page 35.

If You are Stopped by the Police:

- Give the police your correct name, address, and telephone number, if asked to do so
- Be courteous
- Ask the officers if you are being placed under arrest

If You are Taken Into Custody (Arrested):

1. DON'T RESIST! Resisting arrest (fighting or struggling with the police, swearing at them, giving a false name, trying to run away from them, etc.) can only get you into more trouble. Whether you are innocent or guilty, you are better off if you don't fight the police. If you do, you can be charged with a separate offense of assaulting a police officer, even if you are not guilty of the crime for which you are arrested.
2. Remember, you only have to tell the police your name, address and telephone number, but whatever you do, DON'T LIE.
3. ASK FOR A LAWYER! As a juvenile, you are entitled to a lawyer and if you can't hire a lawyer, one will be appointed for you.
4. If you want to talk with your parents, ask to talk to them in private.
5. Neither you nor your parents should sign any paper until your lawyer okays it. Anything you sign can be used against you in Court.

REMEMBER:

Even though you may not want your family to know you are in trouble, the police are required to notify them when you are taken into custody. You have a better chance of being released if your parents or guardian come to the jail/police station.

Soon after you are taken into custody, your parents will be notified.

If the police officer picked you up for a minor offense, he may decide to close the case. The charges are dropped and you can go home. This is known as a station house adjustment. **OR** the police officer may decide to send your case to Court.

If Your Case Is Sent to Court, You May:

1. Be released to the custody of your parents or guardians; or
2. Be placed in an emergency shelter home if your family is unable to take care of you until other living arrangements can be made; or
3. Be held in secure detention if you are dangerous to yourself or others or if you may run away before your hearing.

A LAWYER WILL BE APPOINTED FOR YOU, IF YOU CANNOT AFFORD ONE.

If You are Placed in an Emergency Shelter:

A social worker from the Department of Welfare will visit you. The social worker will ask you questions about:

- Whether you have been going to school
- Where you live
- How things are at home
- Whether you have a job
- If you have been in trouble before

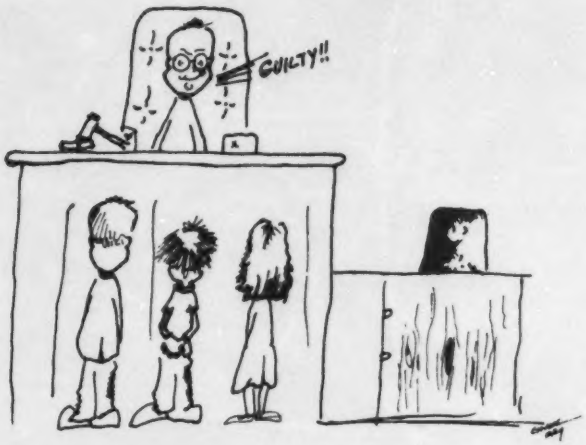
BE HONEST. THESE THINGS ARE CHECKED. The social worker can help you with the Court. Be sure to tell the social worker who might be willing to take you in if your parents can't.

If your parents are unable to take care of you, you may stay in emergency shelter care up to 30 days while other living arrangements are made for you. You may be consulted about these plans and arrangements as they are made.

If you are Placed in Detention, Make Sure:

- Your parents have been notified
- A lawyer has been appointed for you
- You have a copy of your rights while at the detention center

A detention hearing must be held within 24 hours. This hearing will decide if you should be held in secure custody until your trial.



Your lawyer will talk to you before the hearing starts. Tell your lawyer what happened. These facts cannot be told to anyone else without your permission. Also tell your lawyer about your family, how you do in school, if you work, whether you use drugs or alcohol, if you have a juvenile record. LEVEL WITH YOUR LAWYER. All the facts are needed if you are to be helped.

The Detention Hearing

If you are being held in a secure facility, you will be given a hearing within twenty-four (24) hours. The judge will decide either to:

- Release you to your parents or guardian, or
- Order you held in custody until your adjudicatory hearing (trial) if he thinks you are dangerous to yourself or others or are likely to run away before your adjudicatory hearing (trial).

In some cases, the preliminary hearing is held with the detention hearing. A preliminary hearing determines whether reasonable evidence exists to believe you are a delinquent child.

Who will be at the detention hearing?

- You
- Your parents/guardian
- Your lawyer
- Prosecutor
- Judge/referee

Your lawyer will try to persuade the Judge to let you go home.

The prosecutor is the county's lawyer who may try to show that you are dangerous or that you might not show up for your hearing if the Judge sends you home.

If the Judge allows you to go home, you must promise to show up on the date set by the Court and to follow all other conditions set by the Judge. Some of the conditions might be:

- Attend school regularly
- Be home early
- Get counseling services (either you or you and your family)

If the judge orders you held in custody, you will be returned to the detention center. There will be rules to follow at the center. Do your best to cooperate. If you start fights, get into other kinds of trouble, it will go on your record and make it harder for you when you appear before the Judge again.

Preliminary Hearing

If you did not have a detention hearing and were either sent home by the police or placed in emergency shelter care, THIS WILL BE YOUR FIRST TIME IN COURT.

The purpose of this hearing is to see if there is probable cause (reasons or evidence) to believe that you are a delinquent child. This hearing may be waived (given up) if you and your attorney decide to do that.

Who will be at the preliminary hearing?

- You
- Your lawyer
- Your parents
- Judge/referee
- Prosecuting attorney

If probable cause (evidence) is not found, you will be released and the case dismissed.

If probable cause (evidence) is found, you may request the Court for an improvement period.

The Judge/referee may decide that an improvement period is in your best interest and delay the proceedings against you.

Your improvement period will last up to one (1) year and you and your family may have to agree to certain conditions. Some of the conditions might be:

- Attend individual and/or family counseling sessions
- Attend school regularly
- Be home on time at night

During the improvement period, if you get into additional trouble with the police, your improvement period is cancelled and the Court will proceed with the charges against you.

If probable cause is found, and the Judge/referee does not grant you an improvement period, a date will be set for your adjudicatory hearing (trial). At that time, the Court will hear all the evidence on both sides and decide your guilt or innocence.

When you be tried as a juvenile or as an adult? Persons under 18 years of age are usually tried as juveniles. But the prosecuting attorney may ask the Court to try you as an adult.

You may be tried as an adult if:

- You are charged with a felony and have a juvenile record showing you have previously committed felonies
- You are charged with a violent felony and have previously been found delinquent on a similar charge
- You are 16 and are charged with an offense of violence to a person
- You are 16 and are charged with a felony
- You are any age and are charged with:

  Treason
  Murder
  Kidnapping
  Armed robbery
  Arson—first degree
  Sexual assault—first degree

Talk to your lawyer. He will help you understand the charges and answer your questions.

A special hearing will be held and the Judge will decide whether to try you as an adult or a juvenile.

If you are transferred to the Criminal Court of the Circuit Court (adult court), the rest of this information does not apply to you.

For persons tried as juveniles, the next step is:

The Adjudicatory Hearing ("The Trial")

This procedure will determine whether you are guilty or not guilty of being a delinquent child.

Who will be at this hearing?

- You
- Your lawyer
- Your parents
- Other people who can help you
- Judge
- Prosecutor
- Witnesses against you

The Judge will give everyone involved an opportunity to tell what happened. You will be able to tell your side if you and your lawyer want to do so. The Judge will make the decisions about your case.

Either you are:

Guilty—If this happens, you may not find out immediately what will happen to you. That will be decided at a Disposition Hearing (sentencing). (See page 61.)

Not Guilty—If this happens, you are free to go home.

Dismissed—There may not have been enough evidence against you so the charges were dropped. You can go home.

Dismissed With a Warning—The Judge may dismiss the case but talk with you about your behavior and then you can go home. He may refer you and your family to a community agency for services or assistance to help you stay out of trouble.

Things to Remember About Being in Court

1. Be on time. Dress neatly and sit quietly.
2. Ask your lawyer questions if you don't understand what is going on.
3. Tell your lawyer if people in the trial are not telling the truth.
4. Your lawyer will tell you the best way to act.
5. If you do testify, speak slowly and clearly.
6. Show the Judge respect. Call the Judge "Your Honor."

After the Trial. . .

Awaiting disposition (sentencing). If you are found guilty, a Probation Officer will write a report about you for the Judge to use in sentencing. The Probation Officer may ask you and your family more questions, talk to other people who know you, call your school or your employer. You may be sent to a mental health center for evaluation. Give the Probation Officer names of people who can help you. Keep your appointments with the Probation Officer.

Again, TELL THE TRUTH. The Probation Officer checks everything and his report helps the Judge decide what will happen to you.

At the Disposition Hearing

The Judge by law must place you in the least restrictive alternative in keeping with your best interests. The Judge will read the Probation Officer's report and listen to any recommendations made by your lawyer.

You may:

1. Be placed on probation
2. Be referred to a community agency
3. Be ordered to pay for damages or for merchandise you stole
4. Be placed in a mental health facility

5. Be placed in a foster or group home, if your family is not able to take care of you
6. Be placed in a correctional institution

When will you be released? The Judge does not decide how long you will stay when placed in (5) or (6) above. The decision will be based on your record while there; your grades in school; what teachers, counselors, and social workers write about you in reports; and where you will live and what you will do if you are sent home.

You have rights in a correctional institution. You have a right to:

1. An education
2. Decent food
3. Family visits
4. Your own clothes
5. Physical exercise every day
6. Decent living conditions
7. Talk to your attorney

The staff at the correctional institution, mental health facility, or group home will make recommendations to the Judge after you have been there for some months. The Judge decides when you can be released.

GLOSSARY OF TERMS

1. **Arraignment**

   Very soon after a person is arrested, he is taken before an officer of the Court (a Judge or a Magistrate). His name is called and the charges against him are read. He is then asked whether he is guilty or not guilty of the charges and his response (called his **plea**) is officially entered into the Court record. This proceeding is called an arraignment.

2. **Arson**

   A person commits arson when he starts a fire in another person's home or other building. The person must have the actual intent to start the fire.

3. **Assault**

   A person commits an assault when he intentionally and unlawfully threatens to use force to hurt another person physically or actually uses force to try to hurt another person physically, so long as the other person is really afraid of being hurt and it seems that he will be unless someone else prevents it.

4. **Battery**

   A person commits a battery when he unlawfully uses force or other physical violence against another person and that person is actually touched or hurt in any way.

5. **Bribery**

   When a person offers any undue reward to a public official or a policeman or Judge, he has committed bribery. It is also bribery for the public official, policeman, or Judge to take the undue reward.

6. **Burglary**

   A person commits burglary when he breaks and enters (uses any amount of force) the house of another person. The person must have the intent to commit a felony in the house (steal something, kill someone, etc.).

7. **Charge**

   An accusation that a person has committed some crime is a charge. A charge is usually written into a document which may be called a **complaint**, an **information**, or an **indictment**, depending upon who prepares it.

8. **Conspiracy**

   When two or more persons join together for the purpose of doing some unlawful act, it is a conspiracy.

9. **Contempt of Court**

   Any act which is done to embarrass or obstruct a Court in performing its duties or to lessen its authority or dignity is contempt of court.

10. **Conviction**

    The result of a criminal trial which ends in a sentence that the prisoner is guilty as charged is a conviction.

11. **Counterfeiting**

    When a person forges, copies, or imitates an original or genuine item with the intent to pass it as the legitimate item, counterfeiting has occurred. The person must be without the authority or right to forge, copy, or imitate the item.

12. **Crime (Civil or Criminal)**

    If a person does something that is forbidden by law, he has committed a crime. A crime is thought of as an offense against the public in general, so the government (and only the government) punishes anyone who commits a crime. (Compare with definition of **tort**)

13. **Detention**

    The act of keeping back a person.

14. **Embezzlement**

    A person commits embezzlement when he unlawfully takes money or property which has been given to him.

15. **Extortion**

    To obtain money from another person illegally.

16. **Felony**

    Every crime is classified as either a felony or a misdemeanor. A felony is much more serious and will always carry a punishment of **at least** a year in the penitentiary.

17. **Fine**

    To make a person pay money as a punishment.

18. **Forgery**

    A person commits forgery when he makes or changes a writing with the intent to defraud.

19. **Fraud**

    When a person tells a lie so that another person will give up some valuable thing, fraud has occurred. The person must have the intent to do it.

20. **Grand Jury**

    A grand jury is called to investigate. It will hear the evidence that the government has against someone and decide if the person should be brought to trial for a crime. If it decides a person should be tried, it will formally charge the person in an indictment.

21. **Homicide**

    The killing of one person by another person.

22. **Incest**

    Sexual intercourse between close relatives is called incest and it is a crime.

23. **Indictment**

    When a person is accused of a crime by a grand jury, the writing or document in which the charge appears is called an indictment.

24. **Intoxication**

    When a person is given or takes a poison, the condition of the body is intoxication. Usually the poison is alcohol.

25. **Juvenile**

    Being under age—in West Virginia, a person is a juvenile until he reaches 18 years of age.

26. **Larceny**

    A person commits larceny when he steals and carries away another person's property without his consent. The person must intend to do it.

27. **Manslaughter**

When another person is killed, but the person does not plan to do it, manslaughter has occurred.

28. **Misdemeanor**

Every crime is classified as either a felony or a misdemeanor. A misdemeanor is less serious, and will always carry a punishment of a fine or **less than** a year in jail. A person cannot be sent to the state penitentiary for committing a misdemeanor.

29. **Perjury**

When a witness at a trial, who is under oath, makes a false statement with the intent to do it, perjury has occurred.

30. **Petit Jury**

The jury that hears an ordinary civil or criminal trial is called a petit jury. In a criminal trial, it will be made up of twelve people.

31. **Tort**

If a person does something that causes injury to the person or property of another and the law gives the injured party the right to sue and recover money from that person as compensation for the injury he caused, then that person has committed a tort. If you commit a crime, the government can punish you; if you commit a tort, the injured party can make you pay him money to make up for the injury. An act may be both a tort and a crime.

32. **Treason**

A person commits treason when he attempts to overthrow the government in which he is a citizen.

33. **Warrant**

A warrant is a written order issued and signed by a Magistrate and commanding the police to arrest the person it names because he is accused of a crime.

FURTHER READINGS

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FILMS

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